

MINUTES OF THE REGULAR MEETING OF JANUARY 28, 1999

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, January 28, 1999, at 7:30 P.M. in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware, with the following present: Mr. Allen, Mr. Hastings, Mr. Lynch, Mr. Phillips, Mr. Wheatley, Mr. Schrader - Assistant County Attorney, Mr. Lank - Director, and Mr. Abbott - Assistant Director.

Motion made by Mr. Wheatley, seconded by Mr. Hastings, and carried unanimously to adopt the agenda as amended, since Agenda Item 3 for C/Z #1363 has been withdrawn.

Motion made by Mr. Phillips, seconded by Mr. Lynch, and carried unanimously to approve the minutes of January 14, 1999 as corrected.

Mr. Schrader explained how the meeting would be conducted.

II. PUBLIC HEARINGS

Subdivision #99-1 -- application of TED LISZEWSKI to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Seaford Hundred by dividing 53.78 acres into fifty three (53) lots, located south of Road 531, 1,200 feet northwest of Road 533.

Mr. Abbott summarized the Technical Advisory Committee Report of January 20, 1999.

Ted Liszewski and Al Rizzo, developers, and R.B. Kemp, Surveyor, were present on behalf of this application and stated in their presentation and in response to questions raised by the Commission that there is an old cemetery on proposed lot 10; that there are three (3) headstones on the cemetery area; that the area is grown up and has not been maintained; that a restriction will be placed in the deed restrictions that the cemetery area will remain undisturbed and that this area would still be part of the lot; that the dates on the headstones are from the 1850's; that the subdivision will conform to all agency regulations; that the stormwater run-off will be directed toward the existing tax ditch; that Phase I is four (4) lots and each lot has been sold; that Phase II is three (3) lots and each lot has been sold; that the existing lots are occupied by dwellings or dwellings under construction; that entrance permits have been granted by DelDOT for Phase I and Phase II lots; that Phase IIIA should be sold out within two (2) years; that no double-wide manufactured homes will be permitted; that a forested buffer zone is not required; that a permit has been obtained from the Army Corps. of Engineers to fill wetlands; that Phase IIIB will remain as farmland until Phase IIIA is fully developed; that a buffer was considered, but is not cost efficient; that a deed restriction could be placed on the lots for a buffer on individual lots; and submitted photographs of the cemetery area.

Donald Givens, an adjoining landowner, advised the Commission that he is not opposed to the subdivision, but would like to see a forested buffer along the lands of Charlotte Vaughn.

Joel Liefbroer and Garnett O'Marrow spoke in opposition and stated that they were opposed to the proposed density, increase traffic in the area, and environmental concerns; that the surrounding area is predominantly agricultural; and that a buffer should be required.

At the conclusion of the public hearings, the Chairman referred back to this application.

The Commission discussed the points and issues raised during the public hearing.

Motion made by Mr. Wheatley, seconded by Mr. Lynch, and carried unanimously to defer action pending receipt of a septic feasibility statement from the State DNREC.

C/U #1267 -- application of ORVILLE D. AND IDA SYESTER to consider the Conditional Use of land in an AR-1 Agricultural Residential District for an auto body repair and paint shop to be located on a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County, containing 10.00 acres, more or less, lying west of Road 44, 1,220 feet north of Road 224.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended and that the level of service "A" of Road 44 may increase to a level of service "B".

The Commission found that Orville D. and Ida Syester were present and stated in their presentations and in response to questions raised by the Commission that they are requesting permission to utilize an existing 42' by 60' building for an auto body and paint shop; that the building was originally built for their own use to repair and paint farm equipment; that the son has been going to Sussex Tech studying auto body and paint; that they purchased a paint booth at a reasonable cost; that they have poultry houses on the same site, and are willing to close the business if the paint shop impacts their poultry operation; that their poultry houses are closer to the shop than any other; that he has contacted Thomas I. Lilly of DNREC in reference to the requirements for permitting a paint shop and that Mr. Lilly forwarded a Air Contaminant Equipment Registration Form that he must return; that the building permit for the shop was obtained in January 1998 as an agricultural building; that the building was converted to an auto body/paint shop in April 1998; that business hours are proposed to be from 8:00 A.M. to 4:00 P.M.; that the maximum number of vehicles to be stored outside will be six (6); that the storage area may be fenced in the future; that the nearest residence of other ownership is approximately 200 feet north of the shop past the Skotta poultry houses; and that security lighting will be maintained at a minimum.

Mr. Syester submitted a copy of the form requested from DNREC; a list of property owners contacted that live within 1/4 mile of the site and voiced no objection; and pictures of the paint booth, shop building, views from the site to other properties, and views of a body shop in Milford.

Alvin Mast, Kenneth Kozlaski, and James Carlisle were present in support of the application and stated that they have no objection; that the applicant is a good neighbor; that they could be more concerned with the poultry houses than the shop; and that they are aware that the applicant must comply with E.P.A. requirements.

William Skotta was present and stated that he is not opposed to the use, but has some concerns since he has smelled paint odors at his residence, which is approximately 175 feet from the property line near the shop; and discussed a packet of information he submitted in the record. The packet included sections of DNREC Regulation No. 19 (Control of Odorous Air Contaminants); a letter from E.M. Odor, Senior Scientist/Poultry Pathologist from the University of Delaware; Public Health Statements on Toluene and Xylene, toxic substances according to the Agency for Toxic Substances and Disease Registry; sections of DNREC Regulation No. 24 (Motor Vehicle Refinishing); sections of DNREC Regulation No. 2 (Permits); and a copy of the National Institute for Occupational Safety and Health, Centers for Disease Control, Current 48 (Organic Solvent Neurotoxicity).

Motion made by Mr. Wheatley, seconded by Mr. Hastings, and carried unanimously to defer action to the February 11, 1999 meeting.

C/Z #1363 -- application of 1ST STATE STORAGE COMPANY to consider a change of zone from a C-1 General Commercial District to an AR-1 Agricultural Residential District in Georgetown Hundred, located south of Route 9, 300 feet east of Road 321, to be located on 9.0 acres, more or less.

Mr. Lank advised the Commission that this application has been withdrawn.

C/Z #1364 -- application of NORTHEAST BEL CORP. to consider a change of zone from a C-1 General Commercial District to an AR-1 Agricultural Residential District in Georgetown Hundred, located east of Road 321, 300 feet south of Route 9, to be located on a parcel containing 1.75 acres, more or less.

Mr. Lank advised the Commission that DelDOT comments were not requested since the application was for downzoning.

The Commission found that Mark Vurgrenic was present on behalf of this application and stated in his presentation and in response to questions raised by the Commission that the lots are a part of a four (4) lot subdivision; that one lot contains 1.0 acres and the other lot contains 0.75 acre; that single family use is proposed; that entrance approvals have been obtained; and that lot "C" is improved with a dwelling.

The Commission found that no parties appeared in support of or in opposition to the application.

At the conclusion of the public hearings, the Chairman referred back to this application.

The Commission discussed the points and issues raised during the public hearing.

Motion made by Mr. Phillips, seconded by Mr. Lynch, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved since it is a downzoning.

C/Z #1365 -- application of DEBORAH S. APPLEBY to consider a change of zone from an AR-1 Agricultural Residential District to a B-1 Neighborhood Business District in Lewes and Rehoboth Hundred, located southeast of Route 24, 0.5 mile northeast of Love Creek, to be located on a parcel containing 3.765 acres, more or less.

The Commission found, based on comments received from the Sussex County Engineering Department, that the application is located in the area west of the West Rehoboth Expansion Area of the Dewey Beach Sanitary Sewer District where the County Council agreed to restrict zoning changes and conditional uses.

The Commission found, based on comments received from DelDOT, that originally the Department requested a traffic impact study since the use intended is for an arts and crafts studio and gallery; that the Department is concerned about the potential traffic impacts of other commercial development that occur on the site if the gallery were not built or built and later replaced; that as a means of accommodating the applicant, private deed restrictions could be recorded to control the use of the site, and suggested that the property be restricted so as to prohibit at least restaurants, service stations, convenience stores, pharmacies, and banks, and that the restrictions would have to be worded such that they could not be lifted without the concurrence of the Department; and that the applicant has agreed to placing the restrictions.

The Commission found that Deborah Appleby was present and stated in her presentation and in response to questions raised by the Commission that she has spoken to representatives of DelDOT and has now found that since Mr. Bookhammer may create additional lots along Route 24 that DelDOT will require that her entrance be located to the west side of her lot as a joint entrance to serve her lot and the adjoining lot to the west; that the studio/gallery will shift in location to the west side of the lot; that she will have employees, therefore she cannot operate as a home occupation; that she proposes a glass blowing facility for decorative art pieces and lamps; that she will have two apprentice employees, one from Europe and one local; that hours will be flexible due to temperatures; that she may start glass blowing at 6:00 A.M. and stop at 2:30 P.M.; that the apprentices work for approximately one year; that, in the beginning, the business will only be open when working on glass; that in August, the hot shop will not be utilized for glass blowing, due to the heat; that signage will be minimal; that she chose the change of zoning method over the Conditional Use method since she may expand in the future; that she plans to build a home on the site; that she has no access to the dirt road on the Bookhammer property; and that she agrees to the restrictions proposed by DelDOT.

The Commission found that Karen Greenhall and David Greenhall, owners of a business approximately 1,000 feet west of the site, support the rezoning and stated that the use is not a high volume business; that the business is not a production studio; that a nice building is proposed; and that they agree with the proposed restrictions.

Lisa Leo, Barbara Westag, Patricia Warren, Barbara Laurie, and Gene Russo, of Briarwood Estates, were present in opposition and expressed concerns relating to traffic on Route 24; traffic difficulties getting onto Route 24 from the entrance to Brairwood Estates; commercialization of Route 24; and other uses permitted in the B-1 Neighborhood Business District. Most agreed that they were not opposed to the use, only the rezoning. Mr. Russo suggested that a single use deed restriction could be imposed by the landowner limiting the use to the proposed use.

At the conclusion of the public hearings, the Chairman referred back to this application.

The Commission discussed the points and issues raised during the public hearing. There was a consensus of the Commission that they may consider a Conditional Use.

Motion made by Mr. Lynch, seconded by Mr. Wheatley, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be denied. There was a consensus of the Commission that if the applicant reapplies for a Conditional Use, the fee could be waived.

III. OLD BUSINESS

Subdivision #98-11 -- application of LEE LITTLETON to consider the Subdivision of land in a GR General Residential Zoning District in Little Creek Hundred, by dividing 8.76 acres into six (6) lots, located south of Road 454, 300 feet east of Road 457.

The Chairman referred back to this application which was deferred at the December 17, 1998 meeting.

Mr. Abbott advised the Commission that an application for 14 lots went through the public hearing process on July 26, 1990 and action was deferred; that the Commission reviewed pending applications on October 14, 1992 and voided this application since there was not any correspondence received; that two (2) different surveyors have shown that there is a fifty (50) foot wide right of way for the private street; that on June 23, 1988, the Commission approved three (3) lots and a fifty foot right of way and that at that time, the street was not required to be improved; and that a septic feasibility statement from DNREC has been received and that the lots are suitable for individual septic systems.

Mr. Littleton advised the Commission that the road will be built to County specifications, and that an easement will continue to be used as access to the lands of William Carr.

Motion made by Mr. Hastings, seconded by Mr. Lynch, and carried 4 votes to 0, with Mr. Wheatley not participating, to approve the application as a preliminary with the following stipulations:

- a. A Cul-de-sac shall be provided at the end of the private street near Lot 6.
- b. An easement shall be depicted to William Carr's property on the final record plan.
- c. The stormwater management area shall be depicted on the final record plan.
- d. An approval from Delmarva Power and Light shall be required prior to final approval.

Subdivision #98-9 -- application of GARY WATSON to consider the subdivision of land in an AR-1 Agricultural Residential Zoning District in Broad Creek Hundred by dividing 41.86 acres into thirty-seven (37) lots, located north of Road 465, approximately 2,318 feet west of Road 479.

The Chairman referred back to this application which has been deferred since the November 19, 1998 meeting.

The Commission discussed the comments that were received from the DNREC Small Systems Branch referencing the septic feasibility statement.

Motion made by Mr. Hastings, seconded by Mr. Wheatley, and carried unanimously to approve this application as a preliminary with the following stipulations:

- a. A community wastewater disposal system shall be installed as recommended by the Small Systems Branch of DNREC.
- b. All man-made features on the site shall be depicted on the final record plan, i.e. poultry houses to be removed.

AN ORDINANCE TO AMEND CHAPTER 115 OF THE CODE OF SUSSEX COUNTY, TO AMEND THE PROVISIONS RELATING TO DEVELOPMENT IN THE C-1 GENERAL COMMERCIAL ZONING DISTRICT, AND THE B-1 NEIGHBORHOOD BUSINESS ZONING DISTRICT, TO ADD A NEW PROVISION RELATING TO LARGE SCALE COMMERCIAL USES, TO AMEND THE PROVISIONS RELATING TO OFF-STREET PARKING AND OFF-STREET LOADING, TO AMEND SETBACK PROVISIONS, AND TO BRING OTHER PROVISIONS OF CHAPTER 115 IN CONFORMITY WITH THESE AMENDMENTS.

The Chairman referred back to this Ordinance which was deferred at the January 14, 1999 meeting.

Motion made by Mr. Wheatley, seconded by Mr. Lynch, and carried unanimously to defer action.

IV. OTHER BUSINESS

1. Greenwood Country Retirement, Inc.
Final Multi-Family Site Plan - Route 16

The Commission reviewed the final site plan for a multi-family assisted living facility.

Mr. Abbott advised the Commission that the final plan is the same plan that received preliminary approval, and that all agency approvals have been obtained.

Motion made by Mr. Wheatley, seconded by Mr. Phillips, and carried unanimously to approve the site plan as a final.

2. Frances Lake
Lot frontage determination - Indian River

The Commission reviewed a request to have the Indian River determined the front yard for a lot located in West Beach.

Mr. Abbott advised the Commission that the owner would like to have the river considered as the front yard for setback purposes and that a shed is proposed to be 10 feet from the rear lot line, which is a subdivision street.

Motion made by Mr. Lynch, seconded by Mr. Phillips, and carried unanimously to approve the river as the front yard for setback purposes and to approve a setback of 10 feet from the rear property line for a shed.

3. Subdivision #98-1 -- James Beebe
Time Extension

The Commission reviewed a request for a one-year time extension so that all agency approvals can be obtained.

Motion made by Mr. Phillips, seconded by Mr. Lynch, and carried unanimously to approve a one-year time extension.

V. ADDITIONAL BUSINESS

1. Mid-Sussex Rescue

Mr. Abbott advised the Commission that the staff has received a plan to expand the ambulance garage for Mid-Sussex Rescue on Route 5; that the use was approved as a Conditional Use application; and questioned if the expansion will require another Conditional Use application. The original site was being enlarged with additional land to provide space for the expansion.

There was a consensus of the Commission that a Conditional Use application shall be required.

2. Residence at Seaside -- GR-RPC

The Commission reviewed a revised preliminary site plan for the multi-family project off of Road 270A.

Mr. Abbott advised the Commission that a building has been relocated on the preliminary plan; that the same number of units exists; and questioned if the revision was a major change that would require an amended application.

There was a consensus of the Commission that the revised preliminary site plan be allowed to be submitted for site plan review and approval without an amended application.

Meeting Adjourned at 10:30 P.M.